

Ohio LLC Dissenters' Rights: The Time to Get Out is Running Out

A Practical Guidance® Article by Thomas Wyatt Palmer, Thompson Hine LLP



Thomas Wyatt Palmer
Thompson Hine LLP

This article discusses dissenters' rights in Ohio limited liability companies (LLCs) and the impact that the Ohio's Revised LLC Act, Chapter 1706 et seq., effective February 11, 2022, will have on these rights.

Dissenters' rights, also known as appraisal rights, are designed to provide an easy way out of a company for an equity owner by ensuring that the owner can sell his/her interest in the event that a company takes certain action (e.g. merger, consolidation, or conversion) with which the dissenting owner disagrees. Dissenters' rights are currently guaranteed under Ohio law, permitting equity owners of Ohio corporations, partnerships, limited partnerships, and LLCs to leverage their buyout by "dissenting" against the company action and demanding to be paid the "fair cash value" of his/her equity interest. Ohio Rev. Code Ann. §§ 1701.84-85, 1776.76-78, 1782.435-437, 1705.40-42.

For Ohio LLCs, if the company's operating agreement provides a reasonable basis for determining and paying fair cash value, that process controls the company's forced redemption. If not, and if the dissenting member and the company cannot agree on value, then the equity owner may commence a statutory special proceeding in which the Court of Common Pleas determines value, whether the member is entitled to recover interest, and apportions costs of any court-ordered appraisal. Either way, the member withdraws and is paid by the company for his/her equity. The value of an LLC member's equity interest

is defined using the market value test, which is what a willing seller who is under no compulsion to sell would be willing to accept and what a willing buyer who is under no compulsion to purchase would be willing to pay.

That is about to change. Effective February 11, 2022, Ohio's Revised LLC Act, Chapter 1706 et seq., will repeal the current Act, Chapter 1705 et seq., and in doing so eviscerate dissenters' rights. The Revised LLC Act contains no dissenter's rights provisions, nor an alternative process for members to exit and force the company to cash out their equity. It is unclear why the Ohio legislature chose to single out LLCs to remove dissenter's rights; however, that change is consistent with other amendments in the Revised Act further providing that LLCs are creatures of private agreement subject to minimal government regulation. For example, Ohio Rev. Code Ann. § 1706.08 allows all fiduciary duties to be eliminated other than the implied covenant of good faith and fair dealing, compared to Ohio Rev. Code Ann. § 1705.081, which prohibits eliminating the duties of loyalty and care owed by members.

Accordingly, for members of Ohio LLCs seeking to assert derivative rights, the time to do so is running out. For companies that want to avoid a member asserting dissenters' rights and possibly starting costly litigation, wait before executing a merger, consolidation, or conversion.

Thomas Wyatt Palmer, Partner, Thompson Hine LLP

Tom is a partner in the firm's Business Litigation practice group.

He represents businesses and individuals in a wide variety of subjects, including commercial contract disputes, oil and gas rights and mineral lease disputes, fiduciary duty litigation, director and officer liability; consumer finance litigation, trademark and copyright infringement, employer intentional tort, real property tax appeals, construction contract disputes, shareholder derivative actions, and product defect litigation.

Tom has significant experience in the following matters encountered by banks, land acquisition companies, major manufacturers, and franchisors: all aspects of consumer finance litigation; oil and gas lease disputes and contract negotiations, prosecuting and defending federal trademark infringement and dilution actions; enforcing non-compete and non-disclosure agreements; obtaining temporary restraining orders and preliminary injunctions in both federal and state court, and defeating employer intentional tort actions.

Tom also practices before multiple appellate courts, has argued before the Sixth Circuit Court of Appeals, multiple state panels, and authored a victorious Petition for Writ of Certiorari before The Supreme Court of the United States.

Tom is admitted to practice in Ohio, in the United States District Courts for the Southern and Northern Districts of Ohio, the United States District Court for Eastern District of Michigan and in the United States Court of Appeal for the Sixth Circuit.

This document from Practical Guidance[®], a comprehensive resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis[®]. Practical Guidance includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practical-guidance](https://www.lexisnexis.com/practical-guidance). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.